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16 Attorneys for Claimants
 17 First 100, LLC, 1st One Hundred Holdings, LLC
 18 and Battle Born Investments Company, LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,

Case No. 3:20-cv-07811-RS

17 Plaintiff,

**DECLARATION OF JOSEPH
GUTIERREZ IN SUPPORT OF
CLAIMANTS' OPPOSITION TO
MOTION TO STRIKE THE CLAIMS
OF CLAIMANTS BATTLE BORN
INVESTMENTS COMPANY, LLC,
FIRST 100, LLC AND 1ST ONE
HUNDRED HOLDINGS, LLC**

18 v.

19 Approximately 69,370 Bitcoin (BTC), Bitcoin
 20 Gold (BTG), Bitcoin SV (BSV), and Bitcoin
 21 Cash (BCH) seized from
 22 1HQ3Go3ggs8pFnXuHVHRytPCq5fGG8Hbhx,
 23 Defendant.

Date: September 9, 2021
 Time: 1:30 p.m.
 Ctrm: 3 (Via Zoom)

24 First 100, LLC, 1st One Hundred Holdings,
 25 LLC, and Battle Born Investments Company,
 26 LLC,

The Hon. Richard Seeborg

27 Claimants.
 28

Trial Date: None Set

DECLARATION OF JOSEPH GUTIERREZ, ESQ.

I, Joseph Gutierrez, declare as follows:

1. I am an attorney duly admitted to practice before the State of Nevada and United
 2 States District Court for the District of Nevada. I am the founding partner of Maier Gutierrez &
 3 Associates. I have personal knowledge of the facts set forth herein, except as to those stated on
 4 information and belief and, as to those, I am informed and believe them to be true. If called as a
 5 witness, I could and would competently testify to the matters stated herein.

6. I was lead trial counsel for claimants First 100, LLC and 1st One Hundred Holdings,
 7 LLC (“Claimants”) against Raymond Ngan and his entities in litigation that proceeded in the Eighth
 8 Judicial District Court of the State of Nevada as Case No. A-16-738970-C.

9. On March 28, 2017, Claimants First 100 and 1st One Hundred obtained a judgment
 10 for \$2,211,039,718.46 against Raymond Ngan and his entities in Nevada state court, Case No. A-
 11 16-738970-C.

12. The lawsuit concerned Mr. Ngan’s breach of agreements to provide approximately
 13 \$160 million to Claimants’ business ventures.

14. These agreements entered into by Claimants were with the understanding that
 15 Mr. Ngan was known to be an individual of substantial personal wealth.

16. The Nevada state court found that Mr. Ngan’s intentional breach and failure to
 17 perform resulted in the loss of approximately \$1 billion in profits to Claimants, an amount that the
 18 Nevada Court doubled by way of punitive damages, resulting in the largest judgment in the State of
 19 Nevada for a single civil case.

20. To enforce the judgment, Claimants conducted substantial discovery efforts into
 21 Mr. Ngan’s assets, including both domestic and international collection efforts.

22. To date, the collection efforts have revealed tens of millions of dollars’ worth of
 23 assets held by Mr. Ngan, some of which Claimants have acquired, and Claimants’ investigation
 24 remains ongoing. For example, Claimants discovered at least 272 kilograms of Monatomic Ultra-
 25 Pure Electrolytic Copper Powder, a rare isotope with enormous value, and a bank account worth \$8
 26 million belonging to Mr. Ngan, both of which assets he failed to disclose in his bankruptcy filings.
 27

1 9. Mr. Ngan filed a voluntary bankruptcy case (“Bankruptcy Case”) under Chapter 7 of
 2 the United States Bankruptcy Code on July 31, 2017.

3 10. The Bankruptcy Case was filed in the United States Bankruptcy Court, District of
 4 Nevada (“Bankruptcy Court”) and was assigned Case No. 17-14166-BTB.

5 11. Claimants conducted substantial discovery into Mr. Ngan’s assets during the
 6 Bankruptcy Case, including hiring private investigators to search of Mr. Ngan’s domestic and
 7 international assets, conducting multiple 2004 examinations on Mr. Ngan, his family, friends, and
 8 business associates, and issuing subpoenas to various financial institutes where Mr. Ngan was
 9 believed to hold assets.

10 12. Battle Born Investments Company, LLC (“Battle Born”) is a Nevada limited liability
 11 company that purchased the assets of the Raymond Ngan bankruptcy estate on May 8, 2018.

12 13. On May 14, 2018, U.S. Bankruptcy Judge Beesley approved the Battle Born
 13 Purchase Agreement and entered an Order granting Motion to Approve Sale of assets of the Ngan
 14 Bankruptcy estate to Battle Born. The order approved the Purchase and Sale Agreement between
 15 Battle Born and the United States Trustee for the Ngan bankruptcy estate, which included all
 16 disclosed and undisclosed property interests of the bankruptcy debtor.

17 14. In August of 2018, Mr. Ngan attempted to settle the judgment with Claimants and
 18 represented he had access and the ability to pay \$75 million toward a global settlement with
 19 Claimants.

20 15. On November 23, 2018, the parties entered into a Memorandum of Understanding
 21 for settlement of the case and judgment for a total settlement amount of \$75 million. Mr. Ngan,
 22 however, failed to fund the agreement and the case did not settle.

23 16. In January of 2019, Claimants continued with discovery and collection efforts on
 24 Mr. Ngan after he failed to fund the Memorandum of Understanding to settle the case. Claimants
 25 noticed several continued 2004 examinations of Mr. Ngan and requested production of financial
 26 information that he previously failed to disclose.

27 17. On March 13, 2019, Judge Beesley ordered Ngan to produce all of his electronically
 28 stored information on his laptops, cell phone, chat logs, and emails.

1 18. On information and belief, on March 14, 2019, in violation of Judge Beesley's order,
 2 Robert Dooley gave Mr. Ngan's laptop and cell phone to Mr. Ngan's business partner, Samuel
 3 Oliver, who then fled with the devices to Canada.

4 19. On March 15, 2019, Judge Beesley issued a writ of assistance to allow the U.S.
 5 Marshal Service to seize all of Mr. Ngan's financial records, any correspondence, any electronic
 6 storage devices, and all electronically stored information.

7 20. On March 20, 2019, my firm hired Holo Discovery to conduct a forensic imaging of
 8 Ngan's electronic devices.

9 21. On information and belief, on April 9, 2019, Samuel Oliver sent Mr. Ngan's laptop
 10 and cell phone to his attorney, John Harper, Esq., who then turned them over to the Claimants' data
 11 forensic experts at Holo Discovery in Las Vegas, Nevada.

12 22. Holo Discovery took possession of Mr. Ngan's laptop and cell phone and conducted
 13 a forensic imaging of the hard drive and files, uploading them to Relativity, which is a web-based
 14 review platform, for counsel for Claimants to access and review.

15 23. Claimants engaged a private investigator, Lou Cologiovani from Isotro Consulting,
 16 to conduct a forensic review of Mr. Ngan's imaged devices in the Relativity database.

17 24. On information and belief, Mr. Cologiovani's review of the Mr. Ngan's imaged files
 18 revealed Mr. Ngan's negotiations and documents relating to transactions involving the 1HQ3
 19 Wallet, that Mr. Ngan and Mr. Oliver called each other no less than 600 times from late December
 20 2018 through mid-March 2019, and that Mr. Oliver deleted fifty-four files from Mr. Ngan's devices
 21 over a two-day period.

22 25. On October 9, 2020, the Bankruptcy Court entered an Order concerning ownership
 23 and transferability of the Copper Isotope asset in Mr. Ngan's possession and found Battle Born to
 24 be deemed a good faith purchaser of the assets of the Estate. Attached as **Exhibit 1** is a true and
 25 correct copy of the October 9 Bankruptcy Court Order.

26 26. On December 5-6, 2019, the Bankruptcy Court scheduled a hearing in which
 27 Mr. Ngan was to provide sworn testimony regarding his Bankruptcy Case, assets, destruction of
 28 evidence, and business dealings. We also planned at the hearing to request that Mr. Ngan turn over

1 the contents of the 1HQ3 Wallet. However, a few days before the hearing, Mr. Ngan provided the
 2 Bankruptcy Court with a doctor's note requesting a continuance to the hearing based upon a medical
 3 condition.

4 27. On January 31, 2020, the Bankruptcy Court held a status hearing on the continued
 5 hearing on Claimant's Order to Show Cause why Debtor should not be held in contempt and
 6 Mr. Ngan again failed to appear.

7 28. Claimants have attempted to discover the extent of Mr. Ngan's assets and business
 8 dealings since the underlying Nevada state court action was filed against him in 2016.

9 29. On information and belief, Claimants have incurred several hundred thousand dollars
 10 in costs alone in attempting to collect on their judgment and in discovery into Mr. Ngan's assets.

11 30. My investigation of Mr. Ngan has revealed evidence that "Individual X," who
 12 according to the Government turned over the 1HQ3 Wallet to the Government, may be Nikita
 13 Kislitsin, a Russian hacker, or an associate of Mr. Kislitsin. Because we have evidence that
 14 Mr. Ngan was prepared to put 1HQ3 into escrow for a sale, we are continuing to investigate a
 15 possible connection between Mr. Kislitsin and Mr. Ngan. Paragraphs 31 through 38 reflect
 16 information that I obtained in my investigation.

17 31. According to a trial brief submitted in March 2020 by the United States in the
 18 prosecution of a Russian hacker, Yevgeniy Nikulin, for hacking various U.S. companies such as
 19 DropBox, LinkedIn, and Formspring, Mr. Nikulin conspired with four other hackers who were not
 20 charged together in that case, including Nikita Kislitsin, another Russian hacker.¹

21 32. According to Mr. Kislitsin's unsealed indictment, the federal government indicted
 22 Mr. Kislitsin for hacking various accounts in the District of Nevada in 2013 (Case No. 2:13-cr-
 23 00101-GMN-EJY) and the Northern District of California in 2014 (Case No. 3:14-cr-00126).
 24 Mr. Kislitsin then then met with FBI agents after being charged, but was not arrested.

25 33. On information and belief, Mr. Kislitsin was indicted in the Northern District of
 26 California and the District Court of Nevada at the same time that Mr. Ngan lived in those locations.

27

28 ¹ See *United States v. Nikulin*, case No. 3:16-cr-00440, Dkt. No. 170 at 8-10, 14 (N.D. Cal., March 3, 2020).

1 In addition, per Mr. Kislitsin's Twitter feed, he listed his location in or around 2010-2012 as Las
 2 Vegas, where Mr. Ngan resided. Mr. Kislitsin's Twitter handle, @udalite, corresponds with an
 3 AKA listed by the U.S. Attorney's Office in the Northern District of California for Mr. Kislitsin in
 4 his March 13, 2014 indictment in this district. Attached as **Exhibit 2** is a true and correct screenshot
 5 of Mr. Kislitsin's Twitter.

6 34. A jury convicted Mr. Nikulin at trial and the court sentenced him to 88 months in
 7 prison on September 29, 2020. *Id.*, Dkt. No. 282.

8 35. On information and belief, Mr. Kislitsin cooperated in the Government's prosecution
 9 of Mr. Nikulin.²

10 36. On November 3, 2020, four weeks after Mr. Nikulin's sentencing, Individual X
 11 signed the Consent and Agreement to Forfeiture with the U.S. Attorney's office in the Northern
 12 District of California and turned over the contents of the 1HQ3 Wallet. (Dkt. No. 8, ¶ 23.)

13 37. On November 20, 2020, seventeen days after Individual X signed the agreement, a
 14 federal judge in Nevada unsealed Mr. Kislitsin's 2013 indictment in response to a Government
 15 motion, after virtually nothing had occurred in the case over seven years per the docket in that case.³
 16 As the highest ranking federal prosecutors in the nation have commented, the unsealing of an
 17 indictment often indicates that the Government does not anticipate an arrest or prosecution.⁴

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² Mike Eckel, *More Glimpses Of How Russian Intelligence Utilized Hackers Revealed In U.S. Trial*, rferl.org (March 16, 2020 16:13 GMT), <https://www.rferl.org/a/more-glimpses-of-how-russian-intelligence-utilized-hackers-revealed-in-u-s-trial/30491223.html>.

³ *United States v. Kislitsin*, case No. 2:13-CR-00101-GMN-EJY, Dkt. No. 12 (D. Nev., Nov. 2020).

⁴ Jeff Stone, *Indictment names Group-IB executive in scheme to sell hacked data*, Cyberscoop (March 5, 2020), <https://www.cyberscoop.com/group-ib-nikita-kislitsin-indicted-formspring-nikulin/> ("When U.S. prosecutors unseal high-profile indictments against foreign suspects before they are arrested, it can be an implicit acknowledgement that individual is not likely to be apprehended and extradited to U.S. court soon. John Demers, assistant attorney general for national security, said last week that, if prosecutors believe an arrest is likely to occur "within a reasonable timeframe," the government will keep charges sealed.").

1 38. A search of the Office of Foreign Assets Control’s (“OFAC”) Sanction List reveals
2 that the only other individual alleged to have co-conspired with Mr. Nikulin and who remains
3 abroad and out of U.S. custody, Alexsey Belan, is subject to sanctions from the U.S. Government.⁵

4 39. Mr. Kislytsin has not been extradited and is not subject to sanctions from our
5 government per the OFAC Sanction List. Instead, Mr. Kislytsin continues to operate as a prominent
6 international businessperson in Moscow.⁶

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 10th day of August, 2021, in Las Vegas, Nevada.

A handwritten signature in black ink, appearing to read "JOSEPH GUTIERREZ, ESQ.", is positioned above a solid horizontal line. To the left of the signature, there is a stylized, abstract drawing consisting of a large oval shape on the left and a jagged, mountain-like shape on the right, both rendered in black ink.

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⁵ <https://sanctionssearch.ofac.treas.gov/> (last checked Aug. 10, 2021).

⁶ See Indictment names Group-IB executive in scheme to sell hacked data, *supra* at fn. 4; see also Group-IB's official statement on case No. CR 16-00440 involving Nikita Kislytsin, Group IB (March 5, 2020), <https://www.group-ib.com/media/official-statement-gib-cr-16-00440/>.

Exhibit 1

Bruce T Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
October 09, 2020

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Attorneys for Battle Born Investments Company, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

RAYMOND NGAN,

Debtor.

Case No.: 17-14166-BTB
Chapter 7

ORDER CONCERNING OWNERSHIP AND TRANSFERABILITY OF ASSET

Hearing Date: N/A

Hearing Time: N/A

The Court, having considered the *Motion for Clarification of Ownership and Transferability of Asset*, filed by Battle Born Investments Company, LLC (“Battle Born”), and having found good and adequate cause for the relief requested therein;

NOW THEREFORE, the Court hereby **ORDERS** as follows:

IT IS ORDERED that the Motion is **GRANTED**;

1 **IT IS FURTHER ORDERED** that, by virtue of 11 U.S.C. § 541, the commencement of the
2 above-captioned bankruptcy case by Raymond Ngan (“Debtor”) created a bankruptcy estate (“Estate”)
3 comprised of all legal and equitable interests of the Debtor, wherever located and by whomever held;

4 **IT IS FURTHER ORDERED** that, by virtue of 11 U.S.C. § 541, property of the Estate
5 included all interests of the Debtor in certain Monatomic Ultra-Pure Electrolytic Copper Powder
6 (“Powder”);

7 **IT IS FURTHER ORDERED** that, by virtue of 11 U.S.C. § 323, Lenard E. Trustee was
8 appointed as the duly-qualified chapter 7 trustee (“Trustee”) for the Estate;

9 **IT IS FURTHER ORDERED** that, by virtue of 11 U.S.C. § 704, the Trustee was exclusively
10 authorized to liquidate or sell all property of the Estate;

11 **IT IS FURTHER ORDERED** that, pursuant to the Trustee’s exclusive authority to sell assets
12 of the Estate, and after notice and a hearing as required by 11 U.S.C. § 363(b), the Court entered an
13 order (“Sale Order”) on May 14, 2020, at Dkt. No. 294, approving of the sale of certain assets of the
14 Estate to Battle Born, such assets including all of the Debtor’s interest in the Copper;

15 **IT IS FURTHER ORDERED** that, pursuant to 11 U.S.C. § 363(m), Battle Born was deemed
16 a good faith purchaser of the assets of the Estate, including all of the Debtor’s interest in the Copper;

17 **IT IS FURTHER ORDERED** that, on September 10, 2018, the Court entered an order at Dkt.
18 No. 401, by which Battle Born received approval and authority to, with the assistance of the United
19 States Marshals Service, seek out and take possession of the Copper (“Order for Possession”);

20 **IT IS FURTHER ORDERED** that, Battle Born is in lawful possession of the Copper, pursuant
21 to both the Sale Order and the Order for Possession; and

22 //

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1 **IT IS FURTHER ORDERED** that, as a result, Battle Born has the ability and authority
2 necessary to sell or otherwise dispose of the Copper as it sees fit.

3 **IT IS SO ORDERED.**

4
5 Respectfully submitted by:

6 **ANDERSEN LAW FIRM, LTD.**

7 By: /s/ Ryan A. Andersen
8 Ryan A. Andersen, Esq.
9 Nevada Bar No. 12321
10 3199 E Warm Springs Rd, Ste 400
11 Las Vegas, Nevada 89120

12
13 *Attorneys for Battle Born
14 Investments Company, LLC*

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Exhibit 2

 # Explore 

Nikita K.  6 Tweets

Nikita K. @udalite
④ las vegas Joined August 2010
47 Following 63 Followers

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 **Nikita K.** @udalite · Apr 25, 2012
Клево, впервые побывал на баскетболе



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Nikita K. @udalite · Apr 21, 2012
Суровый магазин соленостей на брайтоне



   

Nikita K. @udalite · Apr 21, 2012
А щас идем на плейофф кубка Стенли - будем болеть за New York Rangers :)

   

 **Nikita K. Retweeted**

 **Дронич** @weaselchuck · Jun 1, 2011
Омега плаза горит ок <http://twitpic.com/55e1mk>

  9  1 

 **Nikita K.** @udalite · Apr 16, 2011
Ездил сегодня судить imagine cup. Победила команда из МАИ с моего фак-та ;)). Очаровательные ребята и отличный проект

   



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6 Tweets

Nikita K. @udalite · Apr 14, 2011
Сижу в аэропорту ласвегаса, жду посадки. MIX удался :))
yfrog.com/h7vfiyxj

...

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